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ABSTRACT

The courts will entertain an action to consider the propriety of the suspension or expulsion of a student based on the student's hairstyle. The promulgator of the regulation, be it the principal or the board of education, bears a heavy burden of justification for the rule. The two recognized factors that might sustain a hairstyle regulation are: (1) protection of the health and welfare of the individual student, and (2) the need to prevent disruption that would directly interfere with the educational process. Unless one or both of these factors is present, it is likely that a court will not sustain a regulation of hairstyle or hair length. (Author)

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A Legal Memorandum

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November, 1969

Concerning

THE REGULATION OF STUDENT HAIR STYLES

Several courts have considered student challenges to the regulation of students' hair styles by principals and/or school boards. Other cases are now pending and it is timely, therefore, to provide a synopsis of the cases which may help guide you in the preparation and enforcement of regulations. The current spurt of judicial activity establishes firmly that courts will hear and determine cases involving regulation of students' hair styles and will no longer take the view that this type of regulation of a student's conduct is solely within the purview of the school.

The cases summarized below represent a cross section of decisions pro and con and are not necessarily in the order of their importance.

In *Zachry v. Brown*, 229 F. Supp. 1360 (1967), the United States District Court for the Northern District of Alabama directed that students attending a state junior college not be suspended by the President of the college because the students refused to have their hair cut to conform to conventional standards. Here, the court recognized the wide latitude permitted public school administrators to classify students with respect to dress, appearance, and behavior, but found that the classification of male students by their hair style was unreasonable and, therefore, a violation of the equal protection clause of the Fourteenth Amendment.

In *Breen v. Kahl*, 296 F. Supp. 702 (1969), the United States District Court in Wisconsin found that a regulation of the Board of Education limiting the length of hair to the collar line and the ears was an unreasonable restraint on freedom of expression and, therefore, violative of the due process clause of the Fourteenth Amendment.

In this case, two high school students were expelled for failing to maintain their hair within the limitations of the regulation, which provided:

> Hair should be washed, combed and worn so it does not hang below the collar line in the back, over the ears on the side and must be above the eyebrows. Boys should be clean shaven; long sideburns are out. p. 703

The court, recognizing the long-standing reluctance of courts to interfere with school regulations designed to enhance the educational process, maintain order, and regulate the social aspects of school life, nevertheless concluded that the

EA 002 278

time has come to broaden constitutional protections to public school students whose claim to dignity, said the court, matches that of their elders.

In *Griffin v. Tatum*, 300 F. Supp. 60 (1969), the District Court for the Middle District of Alabama held that a secondary school student was wrongfully denied readmission because he wore his hair in a block style as opposed to a school regulation requiring the hair to be shingled or tapered. The core of the court's decision is contained in the following paragraph:

> In short, the freedom here protected is the right to some breathing space for the individual into which the government may not intrude without carrying a substantial burden of justification. Thus, one may not have the right to walk nude down the median strip of a busy highway. But, until one's appearance carries with it a substantial risk of harm to others, it should be dictated by one's own taste or lack of it.

Heavy reliance was placed on the Supreme Court's decision in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969) with the court quoting from that decision as follows:

> In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the state must respect, just as they themselves must respect their obligations to the state.

The *Tinker* decision is the first statement of the Supreme Court on the rights and privileges of secondary school students in sixteen years and will be a landmark for the guidance of both Federal and State courts hereafter.

In *Richards v. Thurston*, United States District Court for the District of Massachusetts, C.A. No. 69-993-W (decided September 23, 1969), Judge Wyzanski found that a principal's suspension of a student for refusing to cut his hair to the extent approved by the principal was lacking in due process of law and directed the principal to reinstate the student.

Recent cases reaching a contrary conclusion began with *Leonard v. School Committee of Attleboro*, 349 Mass. 704, 212 N.E. (2nd 468, Massachusetts Supreme Judicial Court, 1965). Here, a student was suspended for his refusal to have his hair cut after being so directed by the principal. The principal's letter to the student's parents advised that the student had been suspended from school "until such time as he returns to school with an acceptable haircut." The letter continued:

> School dress regulations do not allow 'extreme haircuts or any other items which are felt to be detrimental to classroom decorum.'

This case is the only recent case decided by a State court, and the Constitutional issues were not discussed. The student's contention was that the principal's ruling was unreasonable and arbitrary since hair style is not connected with the successful operation of a public school. The court declined to pass upon the wisdom or desirability of the school regulation, stating that judicial review would be limited to a consideration of whether the court could find some rational basis for the rule. Being of the opinion that unusual hair styles could disrupt and impede the maintenance of a proper classroom atmosphere and decorum, the court upheld the regulation and the student's suspension.

The United States Court of Appeals for the Fifth Circuit in *Ferrell v. Dallas Independent School District*, 392 F.2nd 697 (5th Cir. 1968) considered the validity of the principal's determination that the length and style of the student's hair would cause commotion, trouble, disruption and a disturbance in the school and that the students would not be admitted until their hair was cut and trimmed. Upholding the principal's position, the court relied heavily on the testimony of the principal that the wearing of long hair subjected the students to substantial harassment: The long-haired boys had been challenged to a fight by other boys, and considerable obscene language had been used by other students in reference to those with long hair. Under these circumstances, the court concluded that activity which so interferes as to hinder the state in providing the best education possible for its people must be eliminated or circumscribed as needed.

Circuit Judge Tuttle, dissenting from the decision of the majority, summarized his views as follows:

> These boys were not barred from school because of any actions carried out by them which were of themselves a disturbance of the peace. They were barred because it was anticipated, by reason of previous experiences, that their fellow students in some instances would do things that would disrupt the serenity or calm of the school. It is these acts that should be prohibited, not the expressions of individuality by the suspended students.

Most recently, in *Crews v. Cloncs*, No. IP 69-C-405 (D.C.S.D. Ind., Sept. 17, 1969) a student was expelled for failure to comply with a hair style regulation which precluded over-the-collar, over-the-ears, and over-the-eyes hair styles. The court upholding the regulation and sustaining the student's expulsion rested its decision on statements of the principal, which the court summarized in the following paragraph:

> Defendants state unequivocally that unusual hair styles such as long hair disrupt the classroom atmosphere, impede classroom decorum, cause disturbances among other students in attendance, and result in the distraction of other students so as to interfere with the educational process in the high school.

The court distinguished *Breen v. Kahl* and *Griffin v. Tatum* because, in those cases, there was not a showing that the hair style of the students resulted in direct classroom disruption.

Conclusion

The courts will entertain an action to consider the propriety of the suspension or expulsion of a student based upon the student's hair style. The promulgator of the regulation, be it the principal or the board of education, bears a heavy burden of justification of the rule. The two recognized factors which might sustain a hair style regulation are:

1. Protection of the health and welfare of the individual student

2. The need to prevent disruption which would directly interfere with the educational process.

Unless one or both of these factors is present, it is likely that a court will not sustain a regulation of hair style or hair length.

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